



AUDIT REFERRAL # 08-05

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 14, 2008

MEMORANDUM

To: Thomasenia P. Duncan
General Counsel

Through: Patrina M. Clark *Just for Amc*
Staff Director

From: John D. Gibson *JDG*
Chief Compliance Officer

Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

Thomas Nurthen *TN*
Audit Manager

By: Mary Moss *MM*
Lead Auditor

Subject: National Right to Life Political Action Committee (A05-48) - Referral Matters

On February 20, 2008, the final audit report on National Right to Life Political Action Committee (NRLPAC) was forwarded to the Commission. The final audit report included the following matter that meets the criteria for referral to your office:

- **Finding 2. Failure to File Notices of Independent Expenditures.** NRLPAC failed to maintain dissemination date documentation for a majority of the \$3,718,909 in independent expenditures it made during the audit period. Where the dissemination date was known, NRLPAC failed to file or untimely filed 24 or 48 hour notices. Finally, independent expenditures paid subsequent to the dissemination date were not properly disclosed.

10044262076

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Mary Moss or Thomas Nurthen at 694-1200.

Attachments:

Finding 2 – Failure to File Notices of Independent Expenditures

cc: Lorenzo Holloway
Lawrence Calvert

10044262077

Finding 2. Failure to File Notices of Independent Expenditures

Summary

During the audit period, NRLPAC made independent expenditures totaling \$3,718,909. NRLPAC failed to maintain documentation supporting the dissemination date for the majority of these independent expenditures. Where the dissemination date was known, NRLPAC failed to file or untimely filed 24 or 48 hour notices for a material number of independent expenditures. Finally, independent expenditures paid subsequent to the dissemination date were not properly disclosed on Schedule D (Debts and Obligations) and Schedule E (Independent Expenditures). In response to the interim audit report, NRLPAC provided details pertaining to new procedures they plan to implement.

Legal Standard

Independent Expenditures – Definition. An independent expenditure is a expenditure for a communication, such as a website, newspaper, TV or direct mail advertisement that:

- expressly advocates the election or defeat of a clearly identified candidate; and
- is not made in consultation or cooperation with, or at the request or suggestion of a candidate, candidate's committee, party committee or their agents. 11 CFR §§104.4 and 109.20(a).

Disclosure requirements – general guidelines: An independent expenditure shall be reported on Schedule E, when added to other independent expenditures made to the same payee during the same calendar year, exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as "memo" entries on Schedule E and as a reportable debt on Schedule D. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11

Last-Minute Independent Expenditure Reports (24-Hour Notices): Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour notice is required for each additional \$1,000 that aggregates. The 24-hour notice must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

Last-Minute Independent Expenditure Reports (48-Hour Notices): Any independent expenditure aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. 11 CFR §§104.4(f) and 104.5(g)(1).

Facts and Analysis

During the audit period, NRLPAC made 1,545 independent expenditures (\$3,718,909) on behalf of 74 federal candidates. For the majority of the expenditures, NRLPAC failed to maintain documentation to support the dissemination date of the communications. Since the dissemination date was not known, NRLPAC filed 24 and 48 hour notices based on the check date for the expenditures.

Seventy-one independent expenditures, totaling \$176,721 on behalf of 16 candidates were made during the period January 1, 2003 through September 30, 2004. A review of these transactions indicated 24/48 hour notices for 42 independent expenditures, totaling \$110,168, were either not filed (9) or filed untimely (33). Twenty-nine of the untimely notices were filed after the general election. These notices were not only filed untimely but NRLPAC did not properly disclose the respective independent expenditures.

Between October 1, 2004 and December 31, 2004 NRLPAC made 1,474 independent expenditures, totaling \$3,542,188, on behalf of 62 candidates. A sample review of these independent expenditures determined that the required notice was either not filed or filed untimely for 30% of the items tested. Similar to the above, a number of independent expenditures paid subsequent to the general election were not properly disclosed.¹

The reporting requirement for independent expenditures is based on the dissemination date, and, in certain cases the reporting requirement is based on both the dissemination date and the check date. An independent expenditure paid subsequent to the dissemination date should be disclosed as a memo entry on Schedule E and as a debt owed to the vendor on Schedule D in the reporting period that the independent expenditure was disseminated. When this independent expenditure is paid, it is reported on Schedule E and the reported debt on Schedule D is then disclosed as paid. For these independent expenditures, NRLPAC merely disclosed the independent expenditure on Schedule E at the time of payment.

This matter was discussed with the NRLPAC representatives during the exit conference. The representatives stated that they itemized all independent expenditures and filed 24/48 hour notices by check date rather than by dissemination date. They related that they planned to hire additional staff in the future and had developed a new procedure to track independent expenditures by dissemination date.

Interim Audit Report Recommendation and Committee Response

The interim audit report recommended that NRLPAC provide evidence that the 24/48 hour notices were timely filed or submit any written comments it considered relevant. Further, it was recommended that NRLPAC submit and implement revised procedures for tracking the dissemination date for independent expenditures and the relevant aggregation for both 24 and 48 hour notices.

¹ The Audit staff noted that subsequent to the general election, and in response to Requests for Additional Information from the Reports Analysis Division, NRLPAC filed over 400 24/48 hour notices pertaining to communications reported as disseminated between October 1 and November 1, 2004, totaling about \$1,800,000. Obviously these notices were filed late.

In response, NRLPAC related that members of it's staff had attended a FEC seminar in 2003, but they did not fully comprehend the significance of the independent expenditure dissemination date, and therefore, had incorrectly reported the independent expenditures based upon when they were incurred and paid. NRLPAC related it has since established new procedures that included the assignment of a person identified as an Independent Expenditure Coordinator (Coordinator). The Coordinator will be responsible for tracking and aggregating independent expenditures and identifying when 24 and/or 48 hour notices are required. The Coordinator will provide the appropriate NRLPAC representatives with the necessary reporting information so that the required notices can be filed. Lastly, the response reflected that NRLPAC staff will continue to attend FEC conferences to keep up-to-date with reporting requirements.

10044262080